Under the law, a druggist was forbidden to sell poisonous drugs in doses except upon the prescription of a physician. The girl said to defendant's clerk that she wanted "a dime's worth of morphine and to please dose it out." The girl testified that the clerk "went to the drawer and got two packages, and handed them to me. I asked him how many grains it was and he said he did not know. I asked him if that was the kind that made you sleep, and he said 'Yes, that will make you sleep all right.'" The girl delivered the packages to the plaintiff's wife, who put the contents of one of them into a glass of water. The girl warned plaintiff's wife that she (the girl) thought that was too much to take at once, to which plaintiff's wife replied that "she guessed the druggist knew what he was doing or ought to," and drank the potion and died. In an action by the husband to recover damages for the death of his wife, *Held*, that the wife was guilty of such negligence that no recovery could be had. *Fowler* v. *Randall* (1903), — Mo. App. —, 73 S. W. Rep. 931.

The girl knew, so reasoned the court, that the drug was not put up in doses and, although the girl did not tell the plaintiff's wife of that fact, the plaintiff's wife must, under the law of agency, be conclusively presumed to know what her agent, the girl, knew: MECHEM ON AGENCY § 721. Plaintiff's wife also presumptively knew the law which forbade the sale of the drug in doses. Plaintiff's wife, then, in contemplation of law knew that the drug was poisonous and that it was not put up in doses. She was warned by the girl against taking so much, but replied that "she guessed the druggist knew his business." She "therefore blindly and recklessly took a packet of morphine at a single dose, without knowing how many grains it contained, and without knowing whether the quantity if taken was a proper or fatal dose. From her act but a single inference is to be drawn, and that is of negligence." As to the liability of druggists for negligence, see I MICHIGAN LAW REVIEW, 63, 130.

NEGLIGENCE—CONTRIBUTORY—PERSONAL INJURY—PROXIMATE CAUSE. —Action to recover damages for personal injury. The plaintiff's health had been greatly impaired by overexertion in putting out a fire started upon plaintiff's premises by the negligence of defendant's servants. *Held*, that the plaintiff may recover. *Glanz* v. *Chicago, M. and St. P. Ry. Co.* (1903), — Ia. —, 93 N. W. Rep. 575.

A peculiarly striking application of the doctrine of proximate cause is found in this case; and one rigidly adhered to in Iowa. Many courts, however, are disposed to consider such a cause too remote. *Pike* v. *R. R.*, 39 Fed. Rep. 255; *Scheffer* v. *R. R.*, 105 U. S. 249; *Seale* v. *R. R.*, 65 Tex. 274; *Donnell* v. *Jones*, 13 Ala. 490; SEDGWICK ON MEASURE OF DAM., p. 89, 5th ed. A want of ordinary care may be said to contribute proximately to the injury, when it is an active and efficient cause of the injury in any degree however slight, and not the mere condition or occasion of it. *R. R.* v. *Becker*, 76 Ills. 30; *R. R.* v. *Peavey*, 29 Kans. 169, 44 Am. Rep. 630; *Murphy* v. *Deane*, 101 Mass. 455, 3 Am. Rep. 390; *City* v. *Fischer*, 111 Pa. St. 9, 56 Am. Rep. 241.

NEGLIGENCE — VIOLATION OF STATUTORY DUTY — EMPLOYMENT OF CHILDREN.—Plaintiff, a boy of thirteen, was employed in defendant's factory. While cleaning a machine he was injured, though the machine was not in motion when he commenced to clean it and no negligence on the part of the defendant was shown. The boy brought suit by his guardian, relying upon a statute, which prohibited the employment of a child under the age

of fourteen years in a factory. Any violation of the statute was punishable as a misdemeanor. *Held*, that the unlawful employment was in itself negligence, and subjected the defendant to a civil liability. *Marino* v. *Lehmaier* (1903), — N. Y. —, 66 N. E. Rep. 572.

In support of its decision, the court cites: *Willy* v. *Mulledy*, 78 N. Y. 310, 34 Am. Rep. 536; *Pauley* v. *Lantern Co.*, 131 N. Y. 90, 29 N. E. 999, 15 L. R. A. 194; *Huda* v. *Am. Glucose Co.*, 154 N. Y. 474, 48 N. E. 897, 40 L. R. A. 411; *Stewart* v. *Ferguson*, 164 N. Y. 553, 58 N. E. 662. But in the above cases actual negligence was present and the injured party could recover at common law irrespective of statutory regulations. In the principal case, the plaintiff's injury was unexplained. No negligence on the part of the defendant was shown. It appears, therefore, that the decision in the principal case goes further than any of the other cases in holding that the mere employment of the plaintiff in violation of the statute was proof of actual negligence.

PATENTS—UTILITY—RIGHT TO INJUNCTION.—A invented a bogus coin-detector for use in coin-operated vending machines. The patent having been assigned to the complainant, it was used by his licensee in gambling devices. The defendants, without license, applied the invention to gambling machines of their own make. In a suit to enjoin the defendants from so using the device, *Held*, that the complainant is entitled to the remedy. *Fuller* v. *Berger* (1903), — C. C. A. —, 120 Fed. Rep. 274.

The defenses to the suit were (1) that the patent is void for want of utility, (2) that the complainant has no standing in equity because he does not come into court with clean hands, since the suit is brought to prevent the defendant from interfering with illegal practices of the licensee. As to the first defense, the court concluded that utility is not negatived by an evil use, when it is apparent that the invention can be used for legitimate purposes; quoting WALKER ON PATENTS, sec. 82 (3d ed.). The second defense was also disposed of by the majority—Judge Grosscup rendering a strong dissenting opinion,—on the ground (1) that upon a mere showing that the complainant has committed some legal or moral offense which affects the defendant only as it does the public at large, the court must grant the equitable remedy and leave the punishment of the offender to other forums; (2) that where the complainant seeks merely to enforce his right to exclude others, an inquiry into the use made of the patent by the owner is irrelevant. *Brown Saddle Co.* v. *Troxel*, 98 Fed. 620; *National Folding Box and Paper Co.* v. *Robertson*, 99 Fed. 985, and cases there considered. The dissenting judge took the ground that the public being a party to the patent, the writ will not issue to enforce the rights under a patent of one who uses those rights to the detriment of public morals. That equity will not refuse relief because of general misconduct, see POMEROY'S EQUITY JURISPRUDENCE, vol. 1, sec. 399. But equity will not enforce a contract or aid a transaction which is against public policy; idem, vol. 1, sec. 402.

PLEADING—VARIANCE.—The plaintiff took out a writ in trespass on the case: his declaration was in trespass. *Held*, that the variance was fatal, that the declaration could not be amended, and that advantage could be taken of the variance at any stage of the case. *Slater* v. *Fehlberg* (1903), — R. I. —, 54 Atl. Rep. 383.

Stevens says the rule is of high antiquity that the declaration must conform to the original writ. ANDREW'S STEVENS' PLEADING, p. 416; *Young* v. *Watson*, Cro. Eliz. 308. The rule has been adopted by early cases in the United States; *Nichols* v. *Nichols* 10 Wend. 630; *Ridder* v. *Whitlock*, 12